

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SHARON E. BARNETT,

Plaintiff,

v.

CAROLYN W. COLVIN,

Defendant.

NO: CV-13-0191-FVS

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 17 and 19. This matter was submitted for consideration without oral argument. Plaintiff was represented by Dana C. Madsen. Defendant was represented by Sarah L. Martin. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the court grants Defendant's Motion for Summary Judgment and denies Plaintiff's Motion for Summary Judgment.

**JURISDICTION**

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT 1

1 Plaintiff Sharon E. Barnett protectively filed for supplemental security  
2 income (“SSI”) on January 8, 2010. Tr. 199. Plaintiff initially alleged an onset date  
3 of December 31, 1995 (Tr. 199), but later amended the onset date to January 8,  
4 2010 (Tr. 37). Benefits were denied initially and upon reconsideration. Tr. 115-  
5 118, 120-21. Plaintiff requested a hearing before an administrative law judge  
6 (“ALJ”), which was held before ALJ R.J. Payne on June 21, 2011. Tr. 62-84. The  
7 ALJ denied benefits (Tr. 88-105), but the Appeals Council remanded the case and  
8 directed the ALJ to develop the record, and further evaluate Plaintiff’s subjective  
9 complaints and RFC (Tr. 106-110). This hearing was held before ALJ R.J. Payne  
10 on July 26, 2012. Tr. 35-61. Plaintiff was represented by counsel and testified at  
11 the hearing. Tr. 46-60. Medical expert Dr. Donna Veraldi also testified. Tr. 38-45.  
12 The ALJ denied benefits (Tr. 14-34) and the Appeals Council denied review (Tr.  
13 1). The matter is now before this court pursuant to 42 U.S.C. § 405(g).

#### 14 **STATEMENT OF FACTS**

15 The facts of the case are set forth in the administrative hearing and  
16 transcripts, the ALJ’s decision, and the briefs of Plaintiff and the Commissioner,  
17 and will therefore only be summarized here.

18 Plaintiff was 36 years old at the time of the hearing. She completed tenth  
19 grade and was in special education her whole life. Tr. 47-48. Plaintiff has been  
20 only sporadically employed and testified that she never held any job for more than

1 one or two months at a time. Tr. 49-50. Plaintiff testified that the number one  
2 reason she wouldn't be able to work is she is forgetful. Tr. 53-54. She also testified  
3 that her reading, writing, and math skills are "poor." Tr. 47.

#### 4 STANDARD OF REVIEW

5 A district court's review of a final decision of the Commissioner of Social  
6 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
7 limited: the Commissioner's decision will be disturbed "only if it is not supported  
8 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,  
9 1158–59 (9th Cir.2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means  
10 relevant evidence that "a reasonable mind might accept as adequate to support a  
11 conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently,  
12 substantial evidence equates to "more than a mere scintilla[,] but less than a  
13 preponderance." *Id.* (quotation and citation omitted). In determining whether this  
14 standard has been satisfied, a reviewing court must consider the entire record as a  
15 whole rather than searching for supporting evidence in isolation. *Id.*

16 In reviewing a denial of benefits, a district court may not substitute its  
17 judgment for that of the Commissioner. If the evidence in the record "is susceptible  
18 to more than one rational interpretation, [the court] must uphold the ALJ's findings  
19 if they are supported by inferences reasonably drawn from the record." *Molina v.*  
20 *Astrue*, 674 F.3d 1104, 1111 (9th Cir.2012). Further, a district court "may not

1 reverse an ALJ's decision on account of an error that is harmless.” *Id.* at 1111. An  
2 error is harmless “where it is inconsequential to the [ALJ's] ultimate nondisability  
3 determination.” *Id.* at 1115 (quotation and citation omitted). The party appealing  
4 the ALJ's decision generally bears the burden of establishing that it was harmed.  
5 *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

### 6 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered “disabled” within  
8 the meaning of the Social Security Act. First, the claimant must be “unable to  
9 engage in any substantial gainful activity by reason of any medically determinable  
10 physical or mental impairment which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous period of not less than twelve  
12 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be  
13 “of such severity that he is not only unable to do his previous work[,] but cannot,  
14 considering his age, education, and work experience, engage in any other kind of  
15 substantial gainful work which exists in the national economy.” 42 U.S.C. §  
16 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to  
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
19 404.1520(a)(4)(i)-(v); 416.920(a)(4) (i)-(v). At step one, the Commissioner  
20 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the  
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
3 404.1520(b); 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis  
5 proceeds to step two. At this step, the Commissioner considers the severity of the  
6 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the  
7 claimant suffers from “any impairment or combination of impairments which  
8 significantly limits [his or her] physical or mental ability to do basic work  
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);  
10 416.920(c). If the claimant's impairment does not satisfy this severity threshold,  
11 however, the Commissioner must find that the claimant is not disabled. *Id.*

12 At step three, the Commissioner compares the claimant's impairment to  
13 several impairments recognized by the Commissioner to be so severe as to  
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§  
15 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more  
16 severe than one of the enumerated impairments, the Commissioner must find the  
17 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

18 If the severity of the claimant's impairment does meet or exceed the severity  
19 of the enumerated impairments, the Commissioner must pause to assess the  
20 claimant's “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work  
2 activities on a sustained basis despite his or her limitations (20 C.F.R. §§  
3 404.1545(a)(1); 416.945(a)(1)), is relevant to both the fourth and fifth steps of the  
4 analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's  
6 RFC, the claimant is capable of performing work that he or she has performed in  
7 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv).  
8 If the claimant is capable of performing past relevant work, the Commissioner  
9 must find that the claimant is not disabled. 20 C.F.R. § § 404.1520(f); 416.920(f).  
10 If the claimant is incapable of performing such work, the analysis proceeds to step  
11 five.

12 At step five, the Commissioner considers whether, in view of the claimant's  
13 RFC, the claimant is capable of performing other work in the national economy. 20  
14 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a) (4)(v). In making this determination, the  
15 Commissioner must also consider vocational factors such as the claimant's age,  
16 education and work experience. *Id.* If the claimant is capable of adjusting to other  
17 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § §  
18 404.1520(g)(1); 416.920(g) (1). If the claimant is not capable of adjusting to other  
19 work, the analysis concludes with a finding that the claimant is disabled and is  
20 therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.  
2 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir.2010). If  
3 the analysis proceeds to step five, the burden shifts to the Commissioner to  
4 establish that (1) the claimant is capable of performing other work; and (2) such  
5 work “exists in significant numbers in the national economy.” 20 C.F.R. § §  
6 404.1560(c); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

### 7 ALJ’S FINDINGS

8 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
9 activity since January 8, 2010, the amended alleged onset date. Tr. 19. At step two,  
10 the ALJ found Plaintiff has the following severe impairments: learning disorder,  
11 dysthymic disorder, borderline intellectual functioning, and dependent personality  
12 disorder. Tr. 19. At step three, the ALJ found that Plaintiff does not have an  
13 impairment or combination of impairments that meet or medically equals the  
14 severity of one of the listed impairments in 20 C.F.R. Part 404, Subpt. P, App’x 1.  
15 Tr. 23. The ALJ then determined that Plaintiff had the RFC

16 to perform a full range of work at all exertional levels but with the following  
17 nonexertional limitations: moderate limitations in the ability to understand,  
18 remember, and carry out detailed instructions; the ability to interact  
appropriately with the general public; and the ability to set realistic goals or  
make plans independently of others.

19 Tr. 25. At step four, the ALJ found Plaintiff has no past relevant work. Tr. 28. At  
20 step five, the ALJ found that considering the Plaintiff’s age, education, work

1 experience, and RFC, there are jobs that exist in significant numbers in the national  
2 economy that Plaintiff can perform. Tr. 28.

### 3 ISSUES

4 The question is whether the ALJ's decision is supported by substantial  
5 evidence and free of legal error. Specifically, Plaintiff asserts: (1) the ALJ  
6 improperly discounted Plaintiff's statements regarding the severity of her  
7 impairments; and (2) the ALJ did not properly consider nor reject Dr. John  
8 Arnold's medical opinion. ECF No. 17 at 8-12. Defendant argues: (1) the ALJ  
9 provided clear and convincing reasons to find Plaintiff not credible; and (2) the  
10 ALJ properly weighed Dr. Arnold's opinion. ECF No. 19 at 6-13.

### 11 DISCUSSION

#### 12 A. Credibility

13 In social security proceedings, a claimant must prove the existence of  
14 physical or mental impairment with "medical evidence consisting of signs,  
15 symptoms, and laboratory findings." 20 C.F.R. §§ 416.908; 416.927. A claimant's  
16 statements about his or her symptoms alone will not suffice. *Id.* Once an  
17 impairment has been proven to exist, the claimant need not offer further medical  
18 evidence to substantiate the alleged severity of his or her symptoms. *Bunnell v.*  
19 *Sullivan*, 947 F.2d 341, 345 (9th Cir.1991) (en banc). As long as the impairment  
20 "could reasonably be expected to produce [the] symptoms," the claimant may offer  
a subjective evaluation as to the severity of the impairment. *Id.* This rule



1 recognizes that the severity of a claimant's symptoms "cannot be objectively  
2 verified or measured." *Id.* at 347 (quotation and citation omitted).

3 If an ALJ finds the claimant's subjective assessment unreliable, "the ALJ  
4 must make a credibility determination with findings sufficiently specific to permit  
5 [a reviewing] court to conclude that the ALJ did not arbitrarily discredit claimant's  
6 testimony." *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir.2002). In making this  
7 determination, the ALJ may consider, *inter alia*: (1) the claimant's reputation for  
8 truthfulness; (2) inconsistencies in the claimant's testimony or between his  
9 testimony and his conduct; (3) the claimant's daily living activities; (4) the  
10 claimant's work record; and (5) testimony from physicians or third parties  
11 concerning the nature, severity, and effect of the claimant's condition. *Id.* Absent  
12 any evidence of malingering, the ALJ's reasons for discrediting the claimant's  
13 testimony must be "specific, clear and convincing." *Chaudhry v. Astrue*, 688 F.3d  
14 661, 672 (9th Cir.2012) (quotation and citation omitted).

15 Plaintiff argues the ALJ improperly discounted Plaintiff's testimony  
16 concerning the severity of her impairments. ECF No. 17 at 11-12. Plaintiff  
17 testified that could not read a newspaper because of poor reading skills, and also  
18 reported that her spelling and math skills were poor. Tr. 47. She testified that the  
19 "number one reason" she was unable to work was that she was "forgetful." Tr. 53-  
20 54. The ALJ found Plaintiff's "statements concerning the intensity, persistence,

1 and limiting effects of [her] symptoms are not entirely credible.” Tr. 26. The ALJ  
2 listed multiple reasons in support of this adverse credibility finding.

3 First, the ALJ cites objective medical evidence that does not support  
4 Plaintiff’s claim that she cannot work due to being forgetful. Tr. 26. Subjective  
5 testimony cannot be rejected *solely* because it is not corroborated by objective  
6 medical findings, but medical evidence is a relevant factor in determining the  
7 severity of a claimant’s impairments. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th  
8 Cir. 2001)(emphasis added). While the court notes that Plaintiff was consistently  
9 diagnosed as having “borderline intellectual functioning” (Tr. 314, 400, 418), the  
10 results of mental status examinations have generally been within normal limits (Tr.  
11 311-12, 325-326, 362-363, 402, 417-418). The ALJ also relies on evidence that  
12 Rey-15 tests “have been consistent with memory malingering.” Tr. 26 (citing 417,  
13 424).<sup>1</sup> Finally, the ALJ accurately notes that the psychological evaluation evidence  
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15 <sup>1</sup> Defendant argues that this mention of memory malingering was a separate reason  
16 given by the ALJ to support his adverse credibility finding. ECF No. 19 at 7-8.

17 However, the court finds the context of the ALJ’s citation to this evidence was to  
18 support the reasoning that objective medical findings did not corroborate Plaintiff’s  
19 testimony that she could not work because she was forgetful. Thus, malingering  
20 will not be analyzed as a separate reason, nor does it alter the applicable standard

1 contains no report by Plaintiff of significant memory problems. Tr. 26. This  
2 objective medical evidence was relevant and properly considered by the ALJ, as it  
3 did not form the sole basis for his adverse credibility finding.

4 Second, the ALJ identified multiple inconsistencies in the record that  
5 support the ALJ's finding that Plaintiff was not credible. Most glaringly, Plaintiff  
6 testified that the primary reason she could not work was forgetfulness (Tr. 54), but  
7 at the same hearing she testified that her memory is "okay" (Tr. 52). Plaintiff's  
8 inconsistent statements about this symptom are a clear and convincing reason to  
9 find her not credible. *See Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996)  
10 (ALJ may consider prior inconsistent statements concerning symptoms in  
11 considering credibility)).

12 Moreover, the ALJ found that "[a]lthough the undersigned has found the  
13 claimant's history of substance dependence is not material to the determination of  
14 disability, the claimant has provided inconsistent information related to her  
15 substance use." Tr. 26. Conflicting statements about substance abuse may support  
16 an ALJ's "negative conclusions about [Plaintiff's] veracity." *Thomas*, 278 F.3d at  
17 959; *see also Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991) (an ALJ may  
18 discredit a claimant's allegations based on relevant character evidence). When  
19 in this case requiring the ALJ to give clear and convincing reasons to support  
20 finding Plaintiff's testimony not credible. *See Chaudhry*, 688 F.3d at 672.

1 questioned at the hearing, Plaintiff alternately testified that she used illegal drugs  
2 “two years ago,” “two to four years ago,” and “four years ago, five years ago, or  
3 somewhere around there.” Tr. 50-51. She further testified that the only drug she  
4 previously used was marijuana. Tr. 51. However, in 2010 she reported to Dr. Joyce  
5 Everhart that she “now uses marijuana occasionally” although the “last time she  
6 used marijuana was about two years ago,” and she denied using any other drugs.  
7 Tr. 361. In contrast to these previous reports, in September 2011 she reported to  
8 Dr. John Arnold that “she had not used meth in years” and her last use of  
9 marijuana was “about a year and a half ago.” Tr. 417. The record again shows  
10 inconsistent responses regarding drug use in November 2011 when she denied any  
11 drug or alcohol usage with “the exception of smoking cannabis during her youth.”  
12 Tr. 422. But in 2007 she reported smoking methamphetamines “three to four  
13 weeks ago” (Tr. 310), and then contradictorily reported in 2008 that she last used  
14 methamphetamines one and a half years ago (Tr. 323). The former provider  
15 concluded that Plaintiff was “vague and inconsistent regarding her substance abuse  
16 history” (Tr. 310); and the latter determined that Plaintiff’s “report of last  
17 methamphetamine and marijuana use do not appear to be credible when compared  
18 to the medical record (Tr. 324).

19 Plaintiff argues that this reason was “inadequate” because it is  
20 “uncontradicted that there is no evidence of current substance abuse and substance

1 abuse has no [effect] on her diagnoses or impairment.” ECF No. 17 at 11-12.

2 However, Plaintiff’s inconsistent statements throughout the record, regarding both  
3 the timing and nature of her drug use, is a clear and convincing reason to discount  
4 Plaintiff’s credibility.

5 Third, the ALJ found that Plaintiff’s “poor work history additionally raises  
6 some questions as to whether the current unemployment is truly the result of  
7 mental health problems.” Tr. 26. Poor work history is an appropriate factor to  
8 consider when evaluating Plaintiff’s credibility. *See Thomas*, 278 F.3d at 959. This  
9 reason was not challenged by Plaintiff in her briefing. *See Carmickle v. Comm’r of*  
10 *Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (court may decline to  
11 address this issue as it was not raised with specificity in Plaintiff’s briefing). As  
12 noted by the ALJ, Plaintiff has not worked since 1998; and prior to that Plaintiff  
13 only worked sporadically and not at substantial gainful activity levels. Tr. 26. She  
14 testified that the longest she had ever worked was one or two months at a time. Tr.  
15 49-50. Plaintiff’s poor work history, even in the years predating her alleged  
16 disability, is a clear and convincing reason to discount Plaintiff’s credibility.

17 Finally, the ALJ noted that Plaintiff did not seek mental health counseling at  
18 any time during the relevant period. Tr. 26. Unexplained, or inadequately  
19 explained, failure to seek treatment or follow a prescribed course of treatment may  
20 be the basis for an adverse credibility finding unless there is a showing of a good

1 reason for the failure. *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007). However,  
2 an ALJ “must not draw any inferences about an individual’s symptoms and their  
3 functional effects from a failure to seek or pursue regular medical treatment  
4 without first considering any explanations that the individual may provide, or other  
5 information in the case record, that may explain infrequent or irregular medical  
6 visits or failure to seek medical treatment.” Social Security Ruling (“SSR”) 96-7p  
7 at \*7 (July 2, 1996), available at 1996 WL 374186. Plaintiff’s briefing offers no  
8 explanation for her failure to pursue treatment. Plaintiff testified that she has  
9 medical insurance and she knows how to make an appointment. Tr. 51-52. A  
10 review of the record confirms that Plaintiff did not seek mental health treatment;  
11 and reveals a statement by Dr. Arnold in 2010 indicating that the only condition  
12 that would impair Plaintiff’s ability to cooperate with treatment was “non-  
13 compliance.” Tr. 402. Plaintiff’s failure to pursue treatment was a valid reason to  
14 find her not credible.

15 For all of these reasons, and having thoroughly reviewed the record, the  
16 court concludes that the ALJ supported his adverse credibility finding with  
17 specific, clear and convincing reasons supported by substantial evidence.

## 18 **B. Medical Opinion Evidence**

19 There are three types of physicians: “(1) those who treat the claimant  
20 (treating physicians); (2) those who examine but do not treat the claimant

1 (examining physicians); and (3) those who neither examine nor treat the claimant  
2 [but who review the claimant's file] (nonexamining [or reviewing] physicians).”  
3 *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th Cir.2001)(citations omitted).  
4 Generally, a treating physician's opinion carries more weight than an examining  
5 physician's, and an examining physician's opinion carries more weight than a  
6 reviewing physician's. *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th  
7 Cir.2001)(citations omitted). If a treating or examining physician's opinion is  
8 uncontradicted, the ALJ may reject it only by offering “clear and convincing  
9 reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d  
10 1211, 1216 (9th Cir.2005). Conversely, “[i]f a treating or examining doctor's  
11 opinion is contradicted by another doctor's opinion, an ALJ may only reject it by  
12 providing specific and legitimate reasons that are supported by substantial  
13 evidence.” *Id.* (citing *Lester v. Chater*, 81 F.3d 821, 830–831 (9th Cir.1995)).  
14 “However, the ALJ need not accept the opinion of any physician, including a  
15 treating physician, if that opinion is brief, conclusory and inadequately supported  
16 by clinical findings.” *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228  
17 (9th Cir. 2009)(quotation and citation omitted). Plaintiff argues that the ALJ erred  
18 by improperly rejecting Dr. John Arnold’s opinion. ECF No. 17 at 8-10.

19 In December 2010, Dr. Arnold examined the Plaintiff and assessed marked  
20 limitations in multiple cognitive and social factors, including her ability to:

1 understand, remember, and persist in tasks by following complex instructions of  
2 three or more steps; learn new tasks; communicate and perform effectively in a  
3 work setting with either normal or limited public contact; and maintain appropriate  
4 behavior in a work setting. Tr. 401. He opined in the narrative section that Plaintiff  
5 was “capable of understanding and carrying out simple repetitive instructions” and  
6 able to “complete very simple tasks without close supervision.” Tr. 401. In  
7 November 2011, Dr. Arnold again examined the Plaintiff and similarly concluded  
8 that Plaintiff is “capable of following simple and repetitive instructions,” but she  
9 would “function best in a work environment having direct support from  
10 supervisors and fellow employees... [that] does not require direct interaction with  
11 the general public.” Tr. 422. He also opined that Plaintiff’s “difficulty with  
12 memory, focus and concentration will limit her success in the work setting.” Tr.  
13 422.

14 The ALJ gave little weight to the evaluations conducted by Dr. Arnold  
15 during the relevant period.<sup>2</sup> Tr. 27. Plaintiff argues the ALJ “did not properly

16 <sup>2</sup> Dr. Arnold also conducted an evaluation in 2009 that found substantially similar  
17 limitations as in his later assessments. Tr. 350. The ALJ did not address this  
18 evaluation in his decision. However, [m]edical opinions that predate the alleged  
19 onset of disability are of limited relevance.” *Carmickle*, 533 F.3d at 1165. The  
20 amended alleged onset date in this case is January 8, 2010 and the evaluation was



1 consider nor reject Dr. Arnold's opinion and, instead, relied on the testimony of  
2 Dr. Veraldi." ECF No. 17 at 10. Plaintiff notes that Dr. Arnold examined Plaintiff,  
3 whereas Dr. Veraldi testified as a medical expert at the hearing but did not treat or  
4 examine the Plaintiff. Tr. 38-45. Plaintiff is correct that "[t]he opinion of a  
5 nonexamining physician cannot *by itself* constitute substantial evidence that  
6 justifies the rejection of the opinion of either an examining or a treating physician."  
7 *Lester v. Chater*, 81 F.3d 821, 831 (9th Cir. 1995)(emphasis added). However,  
8 where, as here, the treating physician's opinion is contradicted by medical  
9 evidence, the opinion may still be rejected if the ALJ provides specific and  
10 legitimate reasons supported by substantial evidence in the record. *See Andrews v.*  
11 *Shalala*, 53 F.3d 1035, 1041 (9th Cir.1995). Plaintiff contends that "the ALJ did  
12 not expressly reject Dr. Arnold's report and utterly failed to provide any reason to  
13 discount it." ECF No. 17 at 10. However, while not identified or challenged by  
14 Plaintiff in her opening brief, the ALJ did offer specific and legitimate reasons for  
15 rejecting Dr. Arnold's opinion. *See Carmickle*, 533 F.3d at 1161 n.2 (court may  
16 decline to address this issue as it was not raised with specificity in Plaintiff's  
17 briefing).

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18 conducted in 2009. Tr. 37. In addition, Plaintiff does not argue that the ALJ erred  
19 in failing to consider this opinion. Thus, the court declines to address this issue as  
20 it was not raised in Plaintiff's briefing. *See id.* at 1161 n.2.

1 As an initial matter, the court finds that two of the reasons given by the ALJ  
2 for rejecting Dr. Arnold's opinion are not specific, legitimate, and supported by  
3 substantial evidence. First, the ALJ identifies an alleged discrepancy between the  
4 narrative portions of Dr. Arnold's evaluations indicating that Plaintiff was capable  
5 of understanding and carrying out simple and repetitive instructions (Tr. 401, 422);  
6 and the marked limitations assessed by Dr. Arnold in the check-box portion of the  
7 2010 evaluation, as identified above, including but not limited to the ability to  
8 learn new tasks and the ability to maintain appropriate behavior in the work  
9 setting. Tr. 401. The ALJ is correct that in the functional limitations section of the  
10 DSHS evaluation form, "marked" is defined as "very significant interference"  
11 "with the individual's ability to perform basic work-related activities" (Tr. 27,  
12 401). However, the ALJ appears to reason that it is inconsistent for Dr. Arnold to  
13 opine that Plaintiff is capable of understanding and carrying out simple and  
14 repetitive instructions while at the same time assessing *any* marked limitations in  
15 other cognitive and social factors. The ALJ does not cite a specific functional  
16 limitation assessed by Dr. Arnold as "marked" that is inconsistent with his opinion  
17 that Plaintiff can carry out simple and repetitive tasks. In fact, Dr. Arnold's check  
18 the box limitations were consistent with his narrative comments, as he assessed  
19 mild limitation in Plaintiff's ability to understand, remember, and persist in tasks  
20 following simple instructions, in contrast to marked limitations in her ability to

1 understand, remember, and persist in following complex instructions. Tr. 401. This  
2 reason is not specific and legitimate, nor is it supported by substantial evidence.

3 Second, the ALJ rejects Dr. Arnold's opinion based in part on "the setting  
4 where [Plaintiff] was being evaluated for the specific purpose of determining  
5 entitlement to either state general assistance benefits, where rules for obtaining  
6 benefits are much more relaxed than those used for Social Security disability  
7 purposes, or for the express purpose of determining eligibility to social security  
8 benefits." Tr. 27-28. It is well-settled in the Ninth Circuit that the purpose for  
9 which a report is obtained does not provide a legitimate basis for rejecting it. *See*  
10 *Lester v. Chater*, 81 F.3d 821, 832 (9th Cir. 1995). Thus, the ALJ erred in  
11 considering the purpose for which Dr. Arnold's report was obtained.

12 However, despite this flawed reasoning, these errors are harmless because  
13 the ALJ articulated additional specific and legitimate reasons for rejecting Dr.  
14 Arnold's opinion that were supported by substantial evidence. *See Carmickle*, 533  
15 F.3d at 1162-63. First, the ALJ found that several of Dr. Arnold's opinions were  
16 unsupported by the results of his own testing, and the record as a whole. Tr. 27.  
17 Consistency with the medical record as a whole, and between a treating physician's  
18 opinion and his or her own treatment notes, are relevant factors when evaluating a  
19 treating physician's medical opinion. *See Bayliss*, 427 F.3d at 1216 (discrepancy  
20 between treating physician's opinion and clinical notes justified rejection of

1 opinion); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (ALJ may  
2 reject treating physician's opinion that is unsupported by record as a whole, or by  
3 objective medical findings"). Moreover, "an ALJ need not accept the opinion of a  
4 doctor if that opinion is brief, conclusory, and inadequately supported by clinical  
5 findings." *Thomas*, 278 F.3d at 957.

6 Here, Dr. Arnold opined that Plaintiff's "difficult with memory, focus, and  
7 concentration would limit her success in the work setting." Tr. 422. However, as  
8 noted by the ALJ, the results of the few mental status examinations conducted by  
9 Dr. Arnold were within normal limits. Tr. 402, 417-18. Most notably, in  
10 September 2011, Dr. Arnold found that Plaintiff had "relatively good short-term,  
11 and acceptable long term memory" and "generally adequate concentration abilities  
12 at the time of assessment." Tr. 417-418. The ALJ found Dr. Arnold's statement  
13 was also unsupported by the "longitudinal record which indicates her pace  
14 persistence, and memory are all within normal limits." Tr. 27. In 2007, Dr. Mahon  
15 Dalley found Plaintiff's IQ indicated Borderline Intellectual Functioning, but the  
16 results of the mental status exam were in the normal to "mild impairment" range.  
17 Tr. 311-312. Dr. Dalley opined that Plaintiff did not have a psychological disability  
18 that would prevent her from working in an entry level position. Tr. 315. In 2008,  
19 Dr. Joyce Everhart opined that Plaintiff had "no difficulty with executive  
20 functioning," "persistence seems good," and the results of mental status exams

1 were within normal limits. Tr. 325-327. In 2010, Dr. Everhart opined that  
2 Plaintiff's pace and persistent were good; and mental status exam results indicated  
3 her long term memory was fair, and she was able to recall three of three objects  
4 immediately and three of three objects after five minutes. Tr. 362-364.

5 The ALJ noted an additional internal inconsistency between Dr. Arnold's  
6 statement in November 2011 that Plaintiff "will require direct supervision in terms  
7 of meeting even basic cognitive demands" (Tr. 422); and his opinion in an earlier  
8 evaluation that Plaintiff "can complete very simple tasks *without* close  
9 supervision" (Tr. 402)(emphasis added). The November 2011 statement is also  
10 inconsistent with the medical record as a whole; which consistently indicates no  
11 problems with social functioning, using public transportation, and interacting with  
12 medical professionals. Tr. 312, 327, 362 -64, 400, 422. After an exhaustive review  
13 of the record, the court finds that inconsistencies between several of Dr. Arnold's  
14 opinions in November 2011, and his own treatment notes and objective findings  
15 from the record as a whole, was a specific and legitimate reason for the ALJ to  
16 reject Dr. Arnold's opinion.

17 Finally, the ALJ reasoned that "Dr. Arnold appeared to place undue reliance  
18 upon the subjective allegations" of the Plaintiff. Tr. 27. "An ALJ may reject a  
19 treatment physician's opinion if it is based 'to a large extent' on a claimant's self-  
20 reports that have been properly discounted as incredible." *Tommasetti v. Astrue*,

533 F.3d 1035, 1041 (9th Cir. 2008). As discussed above, the ALJ properly found Plaintiff was not credible. Dr. Arnold's opinion was based in part on Plaintiff's self-reports; therefore this was a valid reason for the ALJ to reject his opinion.

For all of these reasons, the ALJ properly rejected Dr. Arnold's medical opinion by articulating specific and legitimate reasons supported by substantial evidence.

### CONCLUSION

After review the court finds the ALJ's decision is supported by substantial evidence and free of harmful legal error.

### ACCORDINGLY, IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Summary Judgment, ECF No. 17, is **DENIED**.
2. Defendant's Motion for Summary Judgment, ECF No. 19, is

**GRANTED.**

The District Court Executive is hereby directed to enter this Order and provide copies to counsel, enter judgment in favor of the Defendant, and **CLOSE** the file.

**DATED** this 19<sup>th</sup> day of June, 2014.

s /Fred Van Sickle  
Fred Van Sickle  
Senior United States District Judge